

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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HARVEY DEANDRE MCDANIELS,

Petitioner,

v.

WARDEN GITTERE, *et al.*,

Respondents.

Case No. 3:20-cv-00692-MMD-CLB

ORDER

Petitioner Harvey Deandre McDaniels, a Nevada prisoner, has submitted a petition for writ of habeas corpus under 28 U.S.C. § 2254. (ECF No. 1.) Petitioner has not filed an application to proceed *in forma pauperis* or paid the filing fee. Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2) and Local Rules LSR 1-1, 1-2.

The Court will therefore dismiss Petitioner's habeas petition without prejudice. If Petitioner wishes to refile, he must submit a new habeas petition pursuant to 28 U.S.C. § 2254 on the form required by this court in a new action with either the \$5.00 filing fee or a completed action to proceed *in forma pauperis*, completed on the proper form, with both an inmate account statement for the past six months and a properly executed financial certificate.

This is not petitioner's first failure to properly commence a habeas corpus matter. The court dismissed *McDaniels v. Nevada Dept. of Corrections*, Case No. 3:20-cv-00623-LRH-CLB, for the same reason.

It therefore is ordered that this action is dismissed without prejudice to the filing of a petition in a *new* action with either the \$5.00 filing fee or a properly completed application form to proceed *in forma pauperis*.

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1 It further is ordered that a certificate of appealability is denied, as jurists of reason
2 would not find the court's dismissal of this improperly commenced action without prejudice
3 to be debatable or incorrect.

4 The Clerk of Court is directed to send petitioner two copies each of an application
5 form to proceed *in forma pauperis* for incarcerated persons and a noncapital § 2254
6 habeas petition form, one copy of the instructions for each form, and a copy of the papers
7 that he submitted in this action.

8 The Clerk of Court is further directed to enter judgment accordingly and close this
9 case.

10 DATED THIS 15th Day of December 2020.

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14 MIRANDA M. DU
15 CHIEF UNITED STATES DISTRICT JUDGE
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